

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                            |   |              |
|----------------------------|---|--------------|
| FANTASY COLLECTIONS, INC., | : | CIVIL ACTION |
| Plaintiff,                 | : |              |
|                            | : |              |
| v.                         | : | NO. 02-6627  |
|                            | : |              |
| D.S. MARKETING, LTD. and   | : |              |
| IVAN REMPEL,               | : |              |
| Defendants.                | : |              |

**MEMORANDUM**

BUCKWALTER, S.J.

December 17, 2004

A non-jury trial was held on November 29, 2004.

**I. FINDINGS OF FACT**

1. Plaintiff, Fantasy Shoe Collections, LLC<sup>1</sup> (Fantasy) is a New Jersey Corporation engaged in the business of ladies shoes. (N.T. at 53).
2. Defendant is Ivan Rempel and D.S. Marketing, Ltd., hereafter referred to as Rempel.
3. Fantasy and Rempel entered into a contract on September 1, 1999. The contract was signed by Ivan Rempel as CEO of D.S. Marketing, Ltd. D.S. Marketing, Ltd. was not a Pennsylvania corporation at that time and did not become one until October 5, 2000 (*see* Exhibit P-15). No evidence was introduced to show that the corporation adopted the September 1, 1999 contract which is between Ivan Rempel, trading as D.S. Marketing, Ltd., and Plaintiff.

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1. Motion to Amend name of Plaintiff granted at trial.

3. The contract provided, *inter alia*, that Rempel would provide certain services for Fantasy and would receive a 4% commission on the gross sales.

4. The fees that Rempel deducted exceeded what he was entitled to. Plaintiff's Exhibit #6 shows that Rempel deducted \$104,662.50 for fees, while Exhibit #5 contains the amount he should have charged, which was \$46,573.52. (N.T. at 31, 32). The difference of \$58,088.98 is due and owing to Fantasy.

5. The contract also provided that Rempel was to remit to Fantasy any funds remaining from transactions entered into on behalf of Fantasy upon maturity of said funds. A total of \$18,387.24 was not returned to Fantasy by Rempel (*see* N.T. 74 through 77), and is due and owing to Fantasy.

6. Fantasy through its officers testified that it suffered lost profits of \$75,000 because of Rempel's breach of the contract. Except for the two owners of Fantasy, no other witnesses were called to testify about the lost profits.

7. Fantasy also testified that it has accrued attorney's fees as a result of this lawsuit.

8. Finally, Fantasy alleged a RICO violation in its complaint, but offered only a scintilla of evidence in that regard.

## **II. CONCLUSIONS OF LAW**

There was a valid contract entered into between Fantasy and Rempel. Rempel breached that contract by taking excess commissions and by not remitting to Fantasy the monies it was entitled to under the contract.

Fantasy's claim of lost profits suffers from insufficient evidence to meet its burden of proof. As fact finder, I am left with huge gaps in how the business in question operates and exactly why Fantasy lost business.

As to RICO, among other things, there is no evidence showing a threat of continuity even if there was an enterprise, a fact that the record leaves in doubt as well.

Finally, there is no agreement for attorney's fees and no basis to award them in this case.

An order follows.

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| IVAN REMPEL,               | : |              |
| Defendants.                | : |              |

**ORDER**

AND NOW, this 17<sup>th</sup> day of December, 2004, it is hereby ORDERED that JUDGMENT is entered in favor of Fantasy Shoe Collections, LLC in the amount of \$76,476.22 and against Ivan Rempel, individually and trading as D.S. Marketing, Ltd.

This case is CLOSED.

BY THE COURT:

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RONALD L. BUCKWALTER, S.J.